

DIGITOT RENTAL AGREEMENT

entered into by and between Vexifield (Pty) Limited t/a Digitot ("the Rentor") and the Hirer, being the Sole Proprietor, Close Corporation, Company, Trust or Club as the case may be, referred to in Details Of Hirer of the schedule as "the Hirer". The Rentor hereby rents to the Hirer the equipment described herein ("Equipment") upon the terms and conditions of this Rental Agreement.

TERMS AND CONDITIONS

1. DEFINITIONS

In this agreement, the headings of clauses are for reference purposes only and shall not be taken into account in construing the contents hereof, the singular will include the plural and vice versa, one gender will include the other genders and unless inconsistent with the context, the following words will have the meanings ascribed to them.

- 1.1. "Agreement" or "this Agreement" shall mean this Agreement read with the Schedule and its Annexures and, if applicable, any addendum which, once signed by both parties, shall then form part of this Agreement.
- 1.2. "Schedule" shall mean the section headed "Schedule" to this agreement.
- 1.3. "Addendum" shall mean, where applicable, any addendum hereto;
- 1.4. "Initial Period" shall mean a period of 36 (THIRTY SIX) months commencing from the first day of the calendar month commencing subsequent to the date of installation of the Equipment.
- 1.5. "Installation" shall mean the installation of the Equipment at the location specified by the Hirer in the Schedule
- 1.6. "Date of installation" shall mean the date of installation of the Equipment as determined or specified by the Rentor.
- 1.7. "Supplier" shall include the manufacturer of any equipment rented to the Hirer in terms of this agreement.
- 1.8. "Authorised Representative" shall mean a person, Close Corporation or Company appointed by the Rentor to service, maintain and repair the equipment.
- 1.9. "Commencement Date" shall mean the date of signature of this Agreement.
- 1.10. "Delivered" or "Delivery" of the equipment shall mean delivery to the Hirer's street address recorded in Part "B" of this Agreement.
- 1.11. "Equipment" or "the Equipment" shall mean the equipment and/or any other items stated in the Schedule and shall include all fittings, accessories and modifications to it from time to time and software and all components and replacement parts that may at any time be added to it or substituted in or on it as well as any software of any nature supplied by the Rentor.
- 1.12. "Hirer" means the party referred to in Details Of Hirer of the schedule.
- 1.13. "Rentor" shall mean Vexifield (Pty) Limited t/a Digitot (Registration number 2009/021853/07) of 84 Adelaide Tambo Drive, Durban North, 4051 or its cessionaries.

2. TERMS OF RENTAL AGREEMENT

- 2.1. The Rentor hereby rents to the Hirer, which hires on the terms and conditions as set out in this Agreement, the Equipment.
- 2.2. The Equipment shall remain the property of the Rentor and nothing in this Agreement shall be construed as conferring on the Hirer any right, title or interest in the Equipment other than as Hirer.
- 2.3. In terms of the Value Added Tax Act, value added tax ("VAT") at the prevailing rate as at date of signature hereto has been included in each rental. If there is any change at the rate at which VAT is payable and/or in the amount of VAT payable in respect of the rental payments, the rentals which fall due on or after the date of the said change shall be recalculated accordingly and the said recalculated rentals shall substitute the rentals which were calculated at the old rate.
- 2.4. No variations to this agreement shall be valid or binding on the parties hereto unless reduced to writing and signed by means of handwritten signatures by all the parties.
- 2.5. No party may rely on any representation which allegedly induced that party to enter into this agreement, unless the representation is recorded herein.
- 2.6. No relaxation by a party of any of its rights in terms of this agreement at any time shall prejudice or be a waiver of its rights (unless it is a written waiver) and it shall be entitled to exercise its rights thereafter as if such relaxation had not taken place.

3. DURATION

- 3.1. This Agreement shall commence or be deemed to have commenced, as the case may be, on the Commencement Date and shall continue indefinitely thereafter, subject to the right of either party to terminate this Agreement by way of not less than 1 (ONE) calendar month and not more than 3 (THREE) calendar months written notice to the other, provided that such notice shall not be given so as to terminate this Agreement within the Initial Period or on any later date which is not an anniversary of the commencement of the Initial Period.
- 3.2. The Rentor/authorised dealer shall, on termination of this Agreement, remove the Equipment together with all applicable documents from the street address of the Hirer recorded in "Details Of Hirer" of the schedule or such other premises in which they are situated. Upon the return of the Equipment the Hirer will have no further interest in the Equipment whatsoever. The Hirer shall co-operate with the Rentor in order to facilitate the handover of the Equipment including the handover of any software and accessories which constitute part of the Equipment. The Hirer shall also remove from its records and/or equipment any of the software and shall, with effect from such termination, have no right to utilise any of the said software without the Rentor's written consent.

4. DELIVERY, ACCEPTANCE AND INSTALLATION

- 4.1. The Hirer acknowledges that the basis of this Agreement is that:
 - 4.1.1. the Equipment has been or will be purchased and/or manufactured by the Rentor at the Hirer's request for the purpose of renting the Equipment to the Hirer in terms of this Agreement;
 - 4.1.2. the Equipment has been selected by the Hirer;
 - 4.1.3. the Hirer undertakes to return the Equipment to the Rentor in the same good order and condition at the end of the rental period as it was at the commencement of the rental period, fair wear and tear alone excepted.

- 4.2. In the event of the Equipment being subject to any defect, the Hirer shall notify the Rentor thereof as soon as reasonably practicable after the defect becomes apparent to the Hirer and the Rentor shall be responsible for procuring the repair and, if necessary, the replacement of the Equipment. If the Equipment has to be removed from the Hirer's premises for the purposes of facilitating their repair and/or replacement, the Hirer shall be entitled to a rebate in respect of the rental payable under this agreement which rebate shall be determined on a pro rata basis by reference to the period as from 7 days after the date that the Rentor was notified in writing of the defect by the Hirer until the date of the replacement or repair, as the case may be, of the Equipment. Such rebate shall apply only to the extent that the Hirer is deprived of the use of the Equipment for the period in excess of the said 7 days.
- 4.3. If the Equipment ceases to function properly otherwise than as a result of misuse or damage occasioned to it whilst in the possession or control of the Hirer, the Rentor shall be responsible for procuring the repair and/or replacement, as the case may be, of the Equipment.
- 4.4. The Hirer declares that it has not been induced or influenced by the Rentor or the authorised representative to enter into this Agreement by way of any representation apart from the terms set out herein and acknowledges that this agreement constitutes the entire agreement between the parties and that no statements made prior to entering into this agreement and which are not included in this agreement shall be of any force or effect whatsoever.
- 4.5. The Hirer warrants that the information provided in Details Of Hirer is true and correct and acknowledges that the Rentor will rely upon such information.

5. PAYMENT OF RENTAL CHARGES

- 5.1. The Hirer shall pay to the Rentor rental for the hire of the Equipment in the amount stipulated in equipment listing of the Schedule hereto, on a monthly basis, each and every calendar month commencing from the month of commencement of the initial period until termination of the contract, on the date specified in equipment listing, it being agreed though that the amount of rental payable by the Hirer to the Rentor shall increase on each anniversary of the commencement of the initial period at a rate equivalent to the rate (expressed as a percentage) by which the CPIX, for all categories and for the whole of the Republic of South Africa, increases during the 12 month period ending 2 calendar months prior to the anniversary upon which the increase is to come into effect.
- 5.2. All rentals and any other payments due by the Hirer to the Rentor in terms of this Agreement shall be paid, without deduction of any kind and free of exchange, bank charges and the like, to such address or into such bank account, within the Republic of South Africa as the Rentor may, from time to time and by written notice to the Hirer, stipulate for that purpose and, pending any such stipulation, to the Rentor at the physical address specified in 1.13 above.
- 5.3. As long as this Agreement remains in force the Hirer shall not be entitled to withhold payment of any rental(s) for any reason whatsoever. The Hirer shall not be entitled to set-off against any rentals payable in terms hereof any present or future claims or defence which the Hirer may have against the Rentor from whatsoever cause arising. If the Hirer fails to pay on due date any rental(s), any damage(s) or any other amount falling due or payable to the Rentor under the Agreement, then without prejudice to any other rights the Rentor may have, interest shall accrue on the overdue amount at a rate equivalent to 3% (three percentage points) above the prime overdraft rate of First Rand Limited as from the date that the payment fell due until the date of payment thereof.
In the event that the date specified in the debit order form for the payment of rental by the Hirer to the Rentor falls on a Saturday, Sunday or Public holiday in any month, such payment date shall be extended to the next succeeding business day.

1. USE AND MAINTENANCE OF EQUIPMENT

- 1.1. The Hirer shall at all times keep the Equipment in its possession and under its direct control and shall take reasonable care in the use of the Equipment so as to avoid the Equipment being damaged and shall also take reasonable care to ensure the Equipment is adequately secured to avoid or prevent the Equipment being stolen. The Hirer shall furthermore at its own expense keep the Equipment free from attachment, hypothec, lien or other legal charge or process and shall not without the prior written consent of the Rentor, sell, let, loan, pledge, transfer or otherwise encumber the Equipment in any way or allow any lien to arise in respect of the Equipment.
- 1.2. The Equipment shall be operated at the Hirer's cost and only by competent and properly trained and qualified persons and shall be used only for the purposes for which it is intended and/or designed, and the Hirer shall itself comply and procure compliance with the specifications, instructions and recommendations of the Rentor regarding the Equipment and/or any person or company nominated by the Rentor, to operate, service, maintain and/or repair the Equipment.
- 1.3. The Hirer shall not alter or modify the Equipment or any part without the prior written consent of the Rentor. Any part or accessory added to the Equipment shall become the Rentor's property without any compensation.
- 1.4. The Hirer acknowledges and agrees that the Equipment is movable property and that it will be installed with the intention that it shall so remain notwithstanding the means used to install it.
- 1.5. The Hirer shall use the Equipment solely for the purposes of dispensing and /or measuring, as the case may be, the type of beverage for which it was intended.
- 1.6. The Hirer shall ensure that the equipment is not removed from the Hirer's premises at which the Equipment is installed, or intended to be used as the case may be, as set out in the main schedule to the agreement, without the prior written consent of the Rentor (whose consent shall not be unreasonably withheld).
- 1.7. The Hirer shall not endeavour to repair the Equipment, the object being that any repairs will be undertaken as directed by the Rentor, the cost of which shall not be for the account of the Hirer unless the fault or required repair is attributable to any of the following in which case the cost of repair or replacement as the case may be, shall be for the account of the Hirer :
 - 6.7.1 damage, including inter alia, accidental damage or negligent, malicious or wilful damage by the Hirer or his staff or patrons;
 - 6.7.2 liquid damage to the Equipment or any accessory thereto;
 - 6.7.3 any damage to the key pad or electronic overlay howsoever caused;
 - 6.7.4 any damage to or non-functioning of the scanner howsoever caused;
 - 6.7.5 any damage to or non-functioning of the electric charger howsoever caused;

- 6.7.6 any damage caused by surges/or spikes in the electric power supplied to the Equipment;
- 6.7.7 any damage to or non-functioning of the battery howsoever caused;
- 6.7.8 calibration.

1.8. In the event of any Equipment being faulty or damaged the Rentor shall in its sole and unfettered discretion decide as to whether such Equipment is repaired or replaced and, if replaced whether with new or used equipment and in the event of the Hirer being liable for any costs relating to any repair or replacement shall in its sole discretion determine the amount to be charged to the Hirer;

1.9. The sole and exclusive rights to use the Equipment for advertising purposes or to affix any advertising material to it shall vest in the Rentor or its nominee and the Hirer shall accommodate such advertising on or of the Equipment as the Rentor may reasonably require provided that no costs in respect thereof shall be for the Hirer's account. The Hirer shall co-operate with the Rentor or its nominee in facilitating the use of the Equipment for advertising purposes should the Rentor or its nominee so require.

1.10. The Hirer shall allow the Rentor and/or the Rentor's Authorised Representative to inspect the Equipment, and any computer of the Hirer on which software supplied by the Rentor is installed and/or operating, for purposes of monitoring the efficiency and/or operation of the Equipment and software, whether by manual or electronic methods.

1.11. The Hirer shall allow the Rentor and/or the Rentor's Authorised Representative (but no other person besides the Hirer for its own business purposes) the right to access and/or download, or make copies of any data stored on, or contained in the equipment or on any computer or data storage device of the Hirer where such data has been created, generated by, processed, or stored in any software or database supplied by the Rentor, whether by manual or electronic methods. The Rentor reserves all rights to process and distribute such data for its own account.

1.12. If the Equipment comprises or includes a Digitot bulk spirit liquor dispenser, the Hirer shall display on the front of the device a full bottle of the brand of spirit liquor which is dispensed through the corresponding dispensing device beneath it.

1.13. If the Equipment comprises or includes Digiflow draught beer, soda fountain or cask wine monitoring equipment, the Hirer shall ensure that the beverage lines are cleaned properly and regularly, at least on a monthly basis, so as to ensure the accuracy and reliability of the Equipment.

2. INSURANCE

The Hirer shall be obliged, to take out insurance to cover the risk of the Equipment being stolen or being damaged accidentally or due to negligent, malicious or wilful acts or omissions on the part of the Hirer, it's patrons and/or staff whilst in the possession and/or control of the Hirer. In the event of the Equipment being accidentally damaged whilst in the possession or control of the Hirer the cost of repairing and/or replacing the Equipment shall be borne by the Hirer.

3. INDEMNITY

The Hirer hereby indemnifies and holds the Rentor harmless against any and all losses, injury, damage, fines, penalties and claims of whatsoever nature and howsoever arising during the duration of this agreement from or connected with the Equipment, or the use or possession thereof by the Hirer and whether or not such claims are caused by any act or omission of the Hirer or anyone else.

4. NOTIFICATION TO LESSOR, LANDLORD, OWNER AND MORTGAGEE

Before the Equipment is brought onto or installed in any premises, the Hirer shall notify the lessor, landlord, owner and/or mortgagee, as the case may be, of such premises in writing of the Rentor's ownership of the Equipment and shall similarly notify his new lessor, landlord, owner or mortgagee, as the case may be, of such premises forthwith upon any change taking place in such leasehold ownership or mortgage.

5. RESTRICTION OF MOVEMENT OF EQUIPMENT

The Hirer shall not without the prior written consent of the Rentor remove or keep the Equipment or permit or allow the equipment to be removed or kept outside the premises where they are installed on the commencement date as recorded in this agreement and the annexures hereto.

6. BREACH

6.1. If the Hirer should :

- 6.1.1. default in the punctual payment of any rental(s) or any other amount falling due in terms of this Agreement; or
- 6.1.2. fail to observe and perform any of the terms, conditions and/or obligations of the Agreement that are binding on the Hirer; or
- 6.1.3. commit any act of insolvency, or being a natural person, assign, surrender or attempt to assign or surrender his estate, or
- 6.1.4. suffer any default judgement against it ; or
- 6.1.5. be sequestrated or placed under judicial management or be wound-up, whether provisionally or finally; or
- 6.1.6. abandon the Equipment; or
- 6.1.7. compromise with any of its creditors or endeavour to attempt to do so; or
- 6.1.8. make any incorrect or untrue statements or representation in connection with this Agreement or the Hirer's financial affairs, or any relevant particulars; or
- 6.1.9. do or suffer to be done anything which might prejudice the Rentor's rights under this Agreement; or
- 6.1.10. allow the equipment to be seized under any legal process issued against the Hirer;

the Rentor may elect, without prejudice to any of its other rights, to:

6.1.11. claim immediate settlement, by way of a pre-payment of future rentals, of all amounts payable in terms of this Agreement, whether or not such amounts are then due; or

6.1.12. immediately terminate this Agreement, take possession of the Equipment, recover from the Hirer payment of all such amounts as are in arrear as at date of cancellation, retain all monies already paid by the Hirer and claim as agreed pre-

estimated liquidated damages, all outstanding rentals which would have been due until expiry of the agreement had the agreement been terminated at the next opportunity to so do in terms of clause 3.1 hereto, and all legal costs, including legal costs on the attorney and client scale; or

6.1.13. after due written notice to the Hirer, render the equipment inoperative until all arrear rentals have been paid.

6.2. The sole remedy of the Hirer in the event of the Equipment being defective shall be to have such Equipment, repaired or replacement, which repair or replacement shall be undertaken by the Rentor, in its discretion as soon as reasonably practicable in the circumstances.

6.3. Under no circumstances shall the Rentor be liable to the Hirer for any indirect or consequential loss or damage. It is acknowledged that the credit risk management information will involve various credit information bureaus and their agents and/or other credit grantors. The Hirer also gives the Rentor permission to share its credit risk management information relating to the Hirer with various credit bureaus and other credit grantors.

6.4. Should the Hirer default in the punctual payment of any rental(s) or any other amount owing by it in terms of this Agreement or breach any of its other obligations, the Rentor shall be entitled, without prejudice to any of its other rights, to notify any Credit information Bureau of such default, it being acknowledged that such information will then be available, through the relevant Credit Information Bureau, to other credit grantors and shall be capable of being used in making credit risk management-related decisions. In any event, and regardless of whether or not the Hirer is in default of any of its obligations, the Hirer hereby gives the Rentor permission to process by electronic or any other means any information deemed necessary to conduct credit risk management in respect of the Hirer.

7. VALUATION OF EQUIPMENT

Whenever it is necessary to determine the value of any Equipment returned for the purpose of this clause, the value thereof shall be determined by the Rentor (whose valuation shall constitute prima facie evidence as to the true value thereof).

8. LOSS OF EQUIPMENT BY FIRE / THEFT OR WILLFUL DAMAGE

8.1. The risk in respect of the loss of the Equipment through fire or theft after the Equipment has been delivered shall lie with the Hirer. If the Equipment is stolen or if it is lost through fire, the Hirer shall, as soon as reasonably possible, inform the Rentor thereof and of the circumstances surrounding the loss. In addition, if the Equipment is stolen whilst in the possession or control of the Hirer, the Hirer shall report the theft to the South African Police and shall furnish the Rentor with the relevant police case number, all within 48 hours of first becoming aware of the theft.

8.2. In the event of the loss of the Equipment through fire or theft, the Hirer shall be obliged to bear the cost of procuring a replacement(s).

8.3. In the event of damage to the equipment due to willful neglect or damage, the Hirer shall be obliged to bear the cost of procuring a replacement/s and or cost of service to correct the damage.

9. EARLY SETTLEMENT

The Hirer shall not be entitled to terminate this Agreement otherwise than in accordance with the provisions of clause 3.1 above unless agreed thereto in writing by the Rentor and/or against payment of the aggregate of the rental payments which would be payable to the Rentor for the period from the date of early termination to the date the Hirer was entitled to terminate the agreement in terms of clause 3.1.

10. CERTIFICATE OF INDEBTEDNESS

A certificate under the hand of any director or manager for the time being of the Rentor, whose authority or appointment it shall not be necessary to prove, in respect of any indebtedness of the Hirer under this Agreement or in respect of any other fact shall be prima facie evidence of the Hirer's indebtedness to the Rentor and/or such other fact, for the purpose of obtaining a judgement or Order against the Hirer in any competent Court.

11. CESSION AND DELEGATION

11.1. The Hirer may not cede any of its rights or delegate any of its obligations under this Agreement nor enter into any sub-lease of the Equipment nor part with possession of the equipment to any unauthorised third party without the prior written consent of the Rentor.

11.2. The Rentor shall be entitled to discount this agreement or cede its rights to any third party.

12. COSTS

12.1. All stamp duties payable in respect of this Agreement or securities given in respect thereof shall be paid by the Hirer on demand.

12.2. All legal costs and disbursements including legal costs on the Attorney and own client scale, incurred by the Rentor in enforcing any of its rights under this agreement in recovering possession of the Equipment or in tracing the Hirer or locating the Equipment and disposing of the Equipment, collecting or endeavouring to collect all or any amounts payable by the Hirer to the Rentor in terms hereof or otherwise, and all collection commissions, storage charges, cost of valuation of the Equipment, cost of sale including costs of restoring the Equipment to a saleable condition, selling commissions, dismantling and removal charges and all other fees and charges of a like nature shall be for the account of the Hirer and shall be payable to the Rentor as and when incurred.

13. JURISDICTION

13.1. The Hirer hereby consents to the jurisdiction of the Magistrate's Court having jurisdiction over the hirer's person in respect of all matters relating to this Agreement, notwithstanding that the amount in issue would otherwise have exceeded the jurisdiction of such Court.

13.2. The Hirer confirms that the agreement is accepted by the Rentor in Durban and consequently concluded between the parties in Durban.

13.3. To the extent that the Rentor has to sue the Hirer for monies payable by the Hirer to the Rentor, the Hirer consequently acknowledges that the whole of the Rentor's cause of action will have arisen within the area of jurisdiction of the Durban Magistrate's Court.

13.4. Notwithstanding the provisions of clauses 19.1, 19.2 and 19.3 above, the Rentor shall have the right to institute all or any proceedings connected with this Agreement against the Hirer in any division of the High Court of South Africa having jurisdiction and to claim costs, as contemplated in 18.2 above, on the High Court scale as opposed to the Magistrate's Court scale.

14. DOMICILIUM

14.1. The parties hereby respectively choose domicilium citandi et executandi for all notices and processes to be given and served in pursuance of this Agreement at their respective addresses; that is, in respect of the Rentor, at the address given at the commencement of this agreement, and in respect of the Hirer, at the street address given in Part "B" hereof. Either party may by written notice to the other change its domicilium citandi et executandi, which notice shall be delivered by hand or sent by registered mail to the other party and upon receipt of such notice the address contained therein shall serve as the new domicilium citandi et executandi as aforesaid.

14.2. Any notice to a party :-

14.2.1. sent by prepaid registered post (by airmail if appropriate) in a correctly addressed envelope to it at its domiciliary address shall be deemed to have been received on the 7th (SEVENTH) business day after posting (unless the contrary is proved);

14.2.2. delivered by hand to a responsible person during ordinary business hours at its domiciliary address shall be deemed to have been received on the day of delivery.

15. The Terms and Conditions of this Rental Agreement in force at the date of signature were received, read and well understood.

16. The Hirer acknowledges that the Hirer has perused the Rentor's Terms and Conditions and by the Rentor's signature to this Rental Agreement hereby accepts all the Terms and Conditions set out therein.

EXPLANATION OF RENUNCIATION OF BENEFITS (Refer to Suretyship in Rental Agreement)

1. **NON NUMERATAE PECUNIAE**

But for the renunciation of this exception the Surety would be entitled to raise the defence in connection with a debt for money lent and advanced that notwithstanding his acknowledgement the money was not actually paid to him. The Surety is not barred from raising the defence but if he does so the onus is on him.

2. **EXCEPTIO NON CAUSA DEBITI**

By renouncing this exception the Surety renounces his right to require the creditor to prove that there was a cause or reason for the obligation as stated in the document if the Surety should deny there was such a cause.

3. **EXCEPTIO ERRORE CALCULI AND REVISION OF ACCOUNTS**

The effect of renouncing these exceptions is similar to that under the exceptio non causa debiti where the obligation relates to a settlement of accounts or any matter involving calculations. The Surety by renouncing this exception will bear the onus of showing that there has been some error in the accounts or in the calculations.

4. **EXCEPTIO NO VALUE RECEIVED**

This exception is similar to those mentioned in the preceding paragraph. Renunciation of the exception casts upon the Surety the obligation to prove in relation to an account for goods sold and delivered that he received no value for the amount for which he is acknowledging liability.

5. **EXCEPTIO QUOD METUS CAUSA**

By renouncing this exception the Surety acknowledges that no compulsion or fear, duress, coercion or undue influence was used in persuading the Surety to sign the acknowledgement of debt.

6. **EXCEPTIO EXCUSSIONIS ET DIVISIONIS**

By renouncing this exception the Surety agrees that the creditor may execute upon the Surety direct without first executing upon the principal debtor and thereafter upon the Surety as would normally apply.